OCT 25 1954
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 422

FORT MASON FRUIT COMPANY, a Corporation,
Petitioner,

vs.

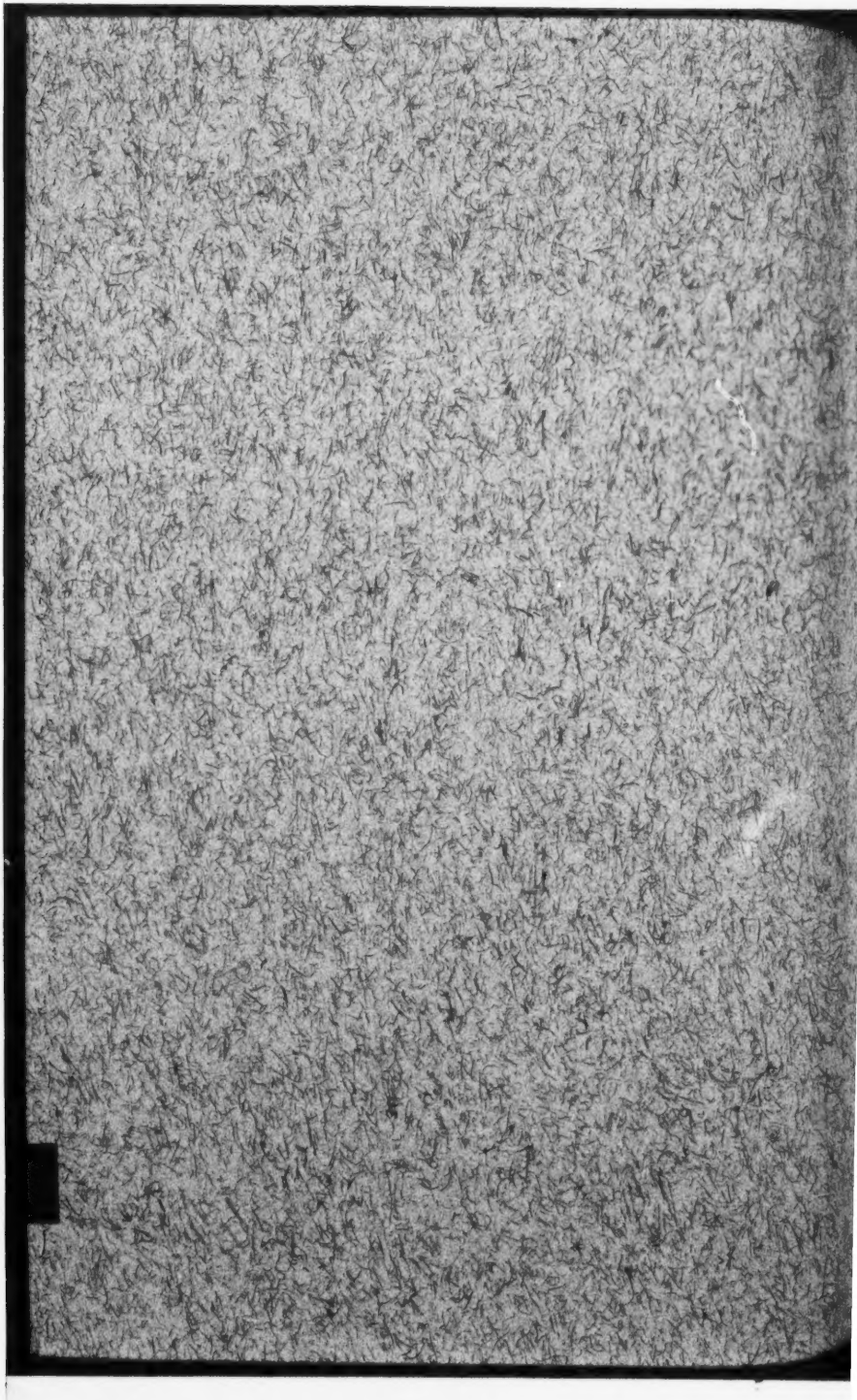
MARTIN P. DURKIN, Secretary of Labor, United States Department of Labor (James P. Mitchell, As Secretary of Labor, United States Department of Labor, Substituted in Place and Stead of Martin P. Durkin, Resigned),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

CLAUDE L. GRAY,
320 North Main Street,
Orlando, Florida
J. HARRIS PATTERSON, SR.,
Lakeland, Florida,
Counsel for Petitioner.

Of Counsel:

DOROTHEA WATSON,
320 North Main Street,
Orlando, Florida.



INDEX

Opinion Below 2
Jurisdiction 2
Question Presented 2
Statutes Involved 3
Statement 3
Specification of Errors to Be Urged 7
Reasons for Granting Writ 8
Conclusion 13

Appendix—

Secs. 203, 213 and 217 of Title 29, U. S. C. A. 14
Opinion in Case No. 14694, Carl H. Chapman vs. Martin P. Durkin 16
Opinion in Case No. 14725, Fort Mason Fruit Company vs. Martin P. Durkin 23

CITATIONS

Cases:

Chester C. Fosgate Co. v. *United States*, 125 F. 2d 775 (C. C. A. 5) 6
Damutz v. *William Pinchbeck, Inc.*, 158 F. 2d 882 (C. C. A. 2) 10
Farmers Irrigation Co. v. *McComb*, 337 U. S. 755, 93 L. Ed. 1672 ..... 6, 7, 12, 13
Lake Region Packing Assn. v. *United States*, 146 F. 2d 157 (C. C. A. 5) 6, 10
McComb v. *Consolidated Fisheries Co.*, 174 F. 2d 74 (C. C. A. 3) 6, 10
U. S. v. *Turner Turpentine Co.*, 111 F. 2d 400 (C. C. A. 5) 10
Waller v. *Humphreys*, 133 F. 2d 193 (C. C. A. 5) 6, 10

Statutes:

81 Congressional Record, page 7648 11
83 Congressional Record, 75th Congress, Third Session, pages 7374, 7389 and 9260 9
83 Congressional Record, page 9162 9
Title 29, U. S. C. A., Sec. 201 et seq., as amended by 63 Stat. 910 ..... 4, 5
Title 29, U. S. C. A., Sec. 203(f), as amended by 63 Stat. 917 (1949) 3, 7, 8, 14
Title 29, U. S. C. A., Sec. 213(a)(6), as amended by 63 Stat. 917 (1949) 3, 7, 8, 14
Title 29, U. S. C. A., Sec. 217, as amended by 63 Stat. 919 (1949) 5, 15

Supreme Court of the United States

OCTOBER TERM, 1954.

No.

FORT MASON FRUIT COMPANY, a Corporation,
Petitioner,

vs.

MARTIN P. DURKIN, Secretary of Labor, United States Department of Labor (James P. Mitchell, As Secretary of Labor, United States Department of Labor, Substituted in Place and Stead of Martin P. Durkin, Resigned),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To: THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner Fort Mason Fruit Company, a Corporation, prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on June 30, 1954 (petition for re-hearing denied August 2, 1954) affirming

a judgment of the United States District Court for the Southern District of Florida.

Opinion Below.

No opinion of the District Court for the Southern District of Florida was rendered or filed; however, the findings of fact and conclusions of law of the trial court appear on pages R. 87 to 97 and the judgment entered thereon on pages R. 98 to 99. The opinion of the United States Court of Appeals for the Fifth Circuit was entered on June 30, 1954, and is reported in 214 F. 2d 363 to 364 (also appears R. 115-117). The opinion in this case is based upon the opinion of a companion case decided the same date *Carl H. Chapman, doing business as Carl Chapman Fruit Company* v. *Martin P. Durkin, Secretary of Labor, United States Department of Labor* (*James P. Mitchell as Secretary of Labor, United States Department of Labor, substituted in place and stead of Martin P. Durkin*), reported in 214 F. 2d 360 to 363. Petition for re-hearing filed by petitioner with the United States Court of Appeals for the Fifth Circuit under date of July 19, 1954 (R. 119-123) was denied under date of August 2, 1954 (R. 124). The Court of Appeals rendered no opinion on such petition.

Jurisdiction.

The judgment of the United States Court of Appeals for the Fifth Circuit sought to be reviewed was entered on June 30, 1954 (R. 118). A petition for re-hearing filed by petitioner on July 19, 1954 (R. 119) was denied on August 2, 1954 (R. 124). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

Question Presented.

The issues raised in this case present a question of interpretation and application of the agricultural exemptions provisions of the Fair Labor Standards Act,[1] and may be stated as follows:

Are all the employees employed by one engaged in the business of harvesting and transportation of citrus fruit to market wholly within the State who work together as an integrated unit in such operation, whether the work is actually performed in the grove or in conjunction with the harvesting and marketing, exempt from the provisions of the Fair Labor Standards Act, under the provisions of Section 213(a)(6) and Section 203(f), U.S.C.A., Title 29?

Statutes Involved.

The applicable sections of the Fair Labor Standards Act herein involved are set forth in the appendix, *infra*, pp. 14-15.

Statement.

The District Court did not render a written opinion but made findings of fact and conclusions of law upon which its final judgment was based (R. 87-100). A stipulation of facts (R. 16-25) was filed, the substance of which was that all of defendant's employees were necessary to the maintenance and operation of its business and that all its equipment was used exclusively in the grove or carrying the fruit to market as a part of defendant's business and that the defendant disposed of all its fruit within the State of Florida and exercised no control over

Footnote 1. Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U.S.C. 201, *et seq.*, as amended in 1949, c. 736, 63 Stat. 910, 29 U.S.C., Supp. V, *et seq.* (Sections 213 (a)(6) and Section 203 (f), U.S.C.A., Title 29).

it after it was delivered to the purchasers. The Circuit Court of Appeals rendered a written opinion affirming the District Court (R. 115-117) and the Circuit Court of Appeals relied upon the case of *Chapman* v. *Durkin*, 214 F. 2d 360, in support of its ruling in the case at bar. Although the citation in the *Chapman* v. *Durkin* case is given for the convenience of the Court, we have attached a copy of the opinion to the appendix.

In rendering its decision in the case at bar, the Circuit Court of Appeals made the following comment:

> "It is not believed that the stipulation justifies any different conclusion from that reached in the Chapman case. There, the business was a unit, and, as here, was one of buying fruit which it gathered from the trees, as well as fruit rejected by packers and fruit brought to its yard by small producers. Since appellant was not a 'farmer' within the meaning of the law, all of the labor, other than gathering the unpicked fruit, was performed elsewhere than 'on a farm'; and regardless of the manner in which the appellant operated, under the authorities cited in the Chapman case, the fact that all employees operated as a unit could not serve to exempt even the same individual employees when engaged in other operations of appellant away from the farm" (R. 116-117).

We deem it important that while both of these cases should be considered together on the application for writ, a better understanding of the questions involved can be made by separate petitions. Accordingly, we have filed separate petitions.

The case arose, as in the *Chapman* case, in the District Court by the Secretary of Labor filing complaint seeking an injunction against petitioner from violating the provisions of Sections 15(a)(1), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938 as amended (Act

of June 25, 1938, 52 Stat. 1060, as amended by 63 Stat. 910, U.S.C., Title 29, Sec. 201, *et seq.*) (R. 1).

The basis for the jurisdiction of the District Court relied on by plaintiff was Section 17 of the Act (Title 29 U.S.C.A. 217, as amended by 63 Statutes 919 (1949)) (R. 1).

The defense interposed other than general denials was that exemption was claimed under the express provisions of the Act itself, specifically claiming that petitioner (defendant below) was engaged primarily in agriculture wherein the majority of his employees were engaged in working in citrus groves picking, loading and harvesting citrus fruit on the trees and in the farm or grove as a part of the harvesting operation and in further sorting and separating said fruit and in the delivery to local points wholly within the state (R. 515, particularly paragraph 11, R. 13).

The case came on for trial upon an agreed stipulation of facts supplemented by some oral testimony before the District Court which held that only those employees who were actually engaged in the picking and moving of the fruit from the trees to defendant's transport trucks were excluded from the Act and that all other employees of defendant, including truck drivers, yard men, garage men, repair men and office employees were not excluded even though the sole activity of the employer was confined to local transactions and in spite of the fact that all of the employees worked together as an integrated unit in this single enterprise.

The evidence was clear and undisputed that petitioner (defendant below) was primarily engaged in the picking and harvesting of the fruit, the greater portion of which was purchased before maturity and engaged in no interstate activity itself. The only basis for the attempt

to bring it within the provisions of goods produced for interstate commerce was that the fruit which it picked and harvested was subsequently sold to plants themselves engaged in interstate commerce (R. 16-25).

Substantially all the fruit handled by petitioner was picked from the groves by its own crews (R. 81-82, at time of trial 97%).

Also it was undisputed that more than 96% of all employees of petitioner were actually engaged in removal of the fruit from the trees in the groves to the market (R. 16-25, Plaintiff's Exhibits 1 to 4, R. 26-30).

The stipulation of facts (as well as all other evidence) fully discloses that the services of all employees were necessary and essential to the conduct of the operation engaged in (R. 16-25).

As indicated in the opinion of the Circuit Court of Appeals both the District Court and the Circuit Court rejected the holdings in the cases of *McComb* v. *Consolidated Fisheries Co.*, 174 F. 2d 74 (C. C. A. 3); *Waller* v. *Humphreys*, 133 F. 2d 193 (C. C. A. 5); *Chester C. Fosgate Co.* v. *United States*, 125 F. 2d 775 (C. C. A. 5); *Lake Region Packing Assn.* v. *United States*, 146 F. 2d 157 (C. C. A. 5), and applied the interpretation placed upon the Act as found in the case of *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 93 L. Ed. 1672 (a case involving irrigation employees), in spite of the fact that Congress had amended the Act so as to overcome the effect of the decision in the last mentioned case.[2]

It appears that in both the *Chapman* case, as well as the case at bar, the rule was applied that in order to be

Footnote 2. Section 13(a)(6) amended in 1949 so as to overcome the effect of this decision.

exempt from the provisions of the Act that the labor must be performed actually on the farm and that no other laborers would be excluded if their work was not performed "on a farm" regardless of the manner in which petitioner operated. And the fact that all employees operated as a unit in both cases would not serve to exempt them under the agricultural provision.

In other words "harvesting" ended at the line of the fence on the farm and could not be extended to include transportation from the edge of the farm to the market.

Specification of Errors to Be Urged.

The Circuit Court of Appeals erred in the following respects:

1. It erred in holding that all of petitioner's employees were not exempt from the provisions of the Fair Labor Standards Act under the provisions of Section 213(a)(6) and Section 203(f), U.S.C.A., Title 29.

2. It erred in holding that:

(a) *"harvesting,"* to be exempt, had to be done by the farmer or on the farm, and

(b) appellant's exemption is concluded merely by the loading on the trucks, and,

(c) in interpreting the word *"harvesting"* as used in the Act, as not including complete transportation to market.

3. It erred in its application of the principles enunciated in the case of *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 93 L. Ed. 1672, the effect of which had been nullified by an amendment to the Act.

4. It erred in affirming the judgment of the District Court.

Reasons for Granting Writ.

1. The decision rendered by the Court of Appeals affirming the District Court in the narrow construction applied to the agricultural exemption provisions of the Fair Labor Standards Act, wherein it was held that certain employees of petitioner were not exempt under Section 213-(a)(6) and Section 203(f), U.S.C.A., Title 29, is in conflict with not only decisions of other Circuit Courts of Appeals but with the Fifth Circuit.

The record will reveal that petitioner was primarily engaged in picking and harvesting citrus fruit from the trees, the greater portion of which was purchased by it before maturity, and that it engaged in no interstate transaction or activity itself. The only basis for the attempt to bring the defendant within the provisions of the production of goods for interstate commerce was that the fruit which it picked and harvested was subsequently sold to plants themselves engaged in interstate commerce (R. 16-25, Plaintiff's Exhibits 1 to 4, R. 26-30).

The District Court, as well as the Circuit Court of Appeals in its affirmance of the District Court, held that only those employees who actually worked in the groves or on the groves were exempt. These included of course the majority of the petitioner's employees.

It is the contention of petitioner that all its activities involved around the picking, harvesting and hauling of the fruit to the canning plants or places of first processing, and that all of its employees worked as an integrated unit and were actually engaged in the agricultural enterprise of "harvesting" and "transporting the fruit to market."

It is illogical to contend that the citrus fruit was harvested when it was brought by the small trucks to a place on the roadside just outside the grove or a very short dis-

tance therefrom, which position the District Court and the Circuit Court of Appeals both took. It is our contention that the acts of petitioner in harvesting and picking and the hauling of citrus fruits were all necessary and integral parts of the harvesting of the fruit, and as such specifically exempt by the Act itself. This contention is borne out by the fact that Congress on three occasions refused to limit the definition so as to exclude transportation of farm products from the farm to market. 83 Congressional Record, 75th Congress, Third Session, pages 7374, 7389 and 9260.

It is clear from the statements to be found in the references contained in the Congressional Record that the Act meant that those engaged in getting the products of the farm to the place of first processing would all be exempt as agricultural employees.

The all inclusive nature of the exemption as intended by Congress was further manifested in comments appearing in Volume 83, Page 9162 of the Congressional Record when the revised bill was submitted to the Senate for its approval. This was the discussion:

> "Mr. Johnson of California: 'I said that, in general language, agriculture is exempted from the operation of the bill.'
>
> "Mr. Thomas of Utah: 'It is.'
>
> "Mr. Johnson of California: 'Does the Senator know of any particular kind of agriculture that is included in the bill?'
>
> "Mr. Thomas of Utah: 'I do not know of any. The definition seems to be all-inclusive, and we tried to make it so.' "

It is submitted that the meaning and purpose of the exemption provisions of the Fair Labor Standards Act so clearly expressed by Congress really needed enforcement of its plain provisions rather than the strained construc-

tion which the District and Circuit Court of Appeals placed upon it in the case at bar.

In striking contrast and in obvious conflict with these holdings, the following cases are cited:

Damutz v. *William Pinchbeck, Inc.*, 158 F. 2d 882 (C. C. A. 2), where the Court stated:

> "It is drawn in far reaching language which shows the intent of Congress to make the term 'agriculture' cover much more than what might be called ordinary farming activity and that is what now controls."

U. S. v. *Turner Turpentine Co.*, 111 F. 2d 400 (C. C. A. 5), where the Court held that when Congress laid down a broad general policy of exclusion the term of general import as "agricultural labor" it must be considered that it intended the term to have a meaning broad enough to embrace agricultural labor of every kind and that some other meaning could not be read into the Act to vary its terms.

Waller v. *Humphreys*, 133 F. 2d 193 (C. C. A. 5), where the Fifth Circuit gave a broad rather than a narrow interpretation to the scope of a similar exemption provision, relating to fisheries.

Lake Region Packing Assn. v. *United States*, 146 F. 2d 157 (C. C. A. 5), where the Fifth Circuit Court of Appeals held that to hold that the cultivation of fruit was and its picking, assembling, and hauling was not agricultural labor will not do. The Statute contains no such limitation.

McComb v. *Consolidated Fisheries Co.*, 174 F. 2d 74 (C. C. A. 3), where the Circuit Court of Appeals for the Third Circuit held that under the Fair Labor Standards Act a similar exemption provision relating to fisheries that all of the employees of an operation were necessary

to carrying on the enterprise were exempt by the plain provisions of the Act and in so doing commented:

> "On the contrary we are merely applying the exemption to those who are plainly and unmistakably within its letter and spirit."

It is submitted that the foregoing cases are in conflict with the case at bar and sustained the contention of petitioner that harvesting is not completed by leaving the fruit in the trailer bodies or half-trailers at the edge of the grove. We feel that the getting of the fruit to the place of first processing is an essential part of harvesting and that the exemption and interpretation to which petitioner is entitled under the definition of agriculture as used in the Fair Labor Standards Act should be the same broad definition as is exemplified in the cited cases and in the apt comments of Senator Black appearing in 81 Congressional Record, Page 7648, where he stated:

> "It specifically excludes all workers in agriculture of all kinds and of all types. There is contained in the measure, perhaps, the most comprehensive definition of agriculture which has been included in any one legislative proposal.
>
> "We have placed together in the bill definitions of agricultural work which have been fixed from time to time in other legislative enactments, and in addition to that we have drawn liberally from Mr. Webster's definition of agriculture."

The concluding comment of the Circuit Court of Appeals in the case at bar was that it believed that references to the Congressional Record as to what happened during consideration of the bills which culminated in the Fair Labor Standards Act were too indefinite and inconclusive to merit comment.

It is respectfully submitted that both the Circuit Court of Appeals and the District Court, in failing to take cognizance of these comments, as well as the interpretations made in other judicial opinions cited herein, constitute such grave error as to entitle petitioner to the granting of the writ and an ultimate reversal.

2. The precise question of Federal Law has not been decided by This Honorable Court, but should be settled by it.

The Circuit Court of Appeals, as well as the District Court, relied upon *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 93 L. Ed. 1672, a decision of This Court, which involved irrigation employees, and although This Court held that such employees were not excluded from the terms of the agricultural exemptions of the Act, the future effect of this decision was nullified by the amendment of Congress which followed in 1949, so as to include these employees as being exempt under the Act. It is submitted that the Circuit Court of Appeals in applying the principles enunciated in the cited case has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of This Court's power of supervision in granting a certiorari to review the opinion and judgment as sought for by petitioner.

The construction which the District Court and the Circuit Court of Appeals placed on the agricultural exemption provisions of the Act was not only too narrow and restricted, but if allowed to stand, would have the effect of destroying the agricultural exemption.

It is submitted that the plainly indicated intent of Congress should not be thus frustrated and the activity of harvesting of fruit be thus by adjudication removed from the legislative exception granted.

We hardly think it necessary to call the Court's attention to the fact that Congress did amend the Act immediately following this Court's decision in the *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 93 L. Ed. 1672, case, and did thus render that decision no longer controlling.

It is therefore submitted that this petition should be granted and the judgment of the Circuit Court of Appeals reversed.

Conclusion.

For the reasons stated above and the argument thereunder, it is respectfully submitted that this petition for writ of certiorari be granted, particularly in view of the importance of the question involved in the administration of the Fair Labor Standards Act and the importance of and far reaching effect of the decision upon the agricultural industry throughout the country.

CLAUDE L. GRAY,
320 North Main Street,
Orlando, Florida,
J. HARDIN PETERSON, SR.,
Lakeland, Florida,
Counsel for Petitioner.

Of Counsel:

DOROTHEA WATSON,
320 North Main Street,
Orlando, Florida.

APPENDIX.

Sections of Fair Labor Standards Act of 1938 referred to in foregoing petition.

DEFINITIONS

Title 29, U.S.C.A., Sec. 203.

"§ 203. Definitions.

As used in sections 201-219 of this title—

* * *

(f) 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j (g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

* * * "

EXEMPTIONS

Title 29, U.S.C.A., Sec. 213, as amended October 26, 1949, c. 736, section 11, 63 Stat. 917.

"§ 213. Exemptions.

(a) The provisions of sections 206 and 207 of this title shall not apply with respect to * * * (6) any employee employed in agriculture * * *."

INJUNCTION PROCEEDINGS

Title 29, U.S.C.A., Sec. 217, as amended Oct. 26, 1949, c. 736, §15, 63 Stat. 919.

"§ 217. Injunction proceedings.

The district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands shall have jurisdiction, for cause shown, to restrain violations of section 215 of this title: Provided, That no court shall have jurisdiction, in any action brought by the Administrator to restrain such violations, to order the payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages in such action."

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 14694.

CARL H. CHAPMAN, doing business as CARL CHAPMAN FRUIT COMPANY, *Appellant*,

versus

MARTIN P. DURKIN, Secretary of Labor, United States Department of Labor, (James P. Mitchell, as Secretary of Labor, United States Department of Labor, substituted in place and stead of Martin P. Durkin), *Appellee.*

Appeal from the United States District Court for the Southern District of Florida.

(June 30, 1954.)

Before STRUM and RIVES, Circuit Judges, and DAWKINS, District Judge.

DAWKINS, District Judge: The question presented by this appeal is, was the court below correct in holding that certain of appellant's employees were not exempt from

the provisions of the Fair Labor Standards Act, Section 213 (a)(6), called the Act.[1]

Appellant maintains an office, and a yard with fruit bins, a garage for the upkeep and repair of his trucks, trailers and other machinery, in the City of Orlando, Florida, from which all of its operations are carried on. His business was known to the industry as "bird dog" operations, that is, he purchased fruit unfit for packing and sale in its original state, and sold the same to canning factories. His sources were three in number, (1) fruit left by producers on the trees as unfit for packing, (2) packing plants, and (3) purchases from small operators who delivered the fruit at appellant's place of business in Orlando.

In the first category he took title to the fruit on the trees, allowing it to remain there until sufficiently ripe for the market; in the second, culls were purchased at the packing plants; and in the third, as stated, small purchases were made at his yard and mixed indiscriminately. All labor, including gathering from the trees and transporting to market, repairs and maintenence of his trucks and trailers, loading into and from his bins, office work, etc., was performed by appellant's own employees. The gatherers loaded the fruit into trailers, which were picked up by tractors at designated points in or near the groves. The court below held the gatherers exempt from the Act as agricultural workers, but found all other employees protected by the Fair Labor Standards Act. There was no cross-appeal.

The issue turns upon the proper application of Sec. 3(f) of the Act, to wit:

Footnote 1. Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U.S.C. 201, *et seq.*, as amended in 1949, c. 736, 63 Stat. 910, 29 U.S.C., Supp. V, *et seq.*

" 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations *performed by a farmer or on a farm* as an incident to or in conjunction with such farming operations, *including* preparation for market, *delivery to storage or to market or to carriers for transportation to market.*" (Emphasis added)

It is not contended that appellant was a farmer, but that the work performed by his employees was part of and essential to the growing and producing of fruit, (which concededly is exempt under the above quoted meaning of agriculture) as well as its "delivery to storage or market * * *." However, it seems clear that his business of buying, transporting and selling citrus fruit to canners, about 60% of which is purchased on the trees, and the rest from the other two sources, was not farming, yet he seeks to avail himself of the benefits accruing to a farmer, or one engaged in agriculture.

Appellant relies rather strongly upon the cases of *McComb* v. *Consolidated Fisheries Co.*, 174 F.2d 74 (3rd Cir.) and *Waller* v. *Humphreys*, 133 F.2d 193, the latter by this Court. Those cases involved another favored type of industry, curing and packing of fish. There the workers were all employees of the persons engaged in that particular industry, in the performance of their duties essential thereto; while in the present case, appellant seeks the same benefits from a business which, in the handling of manufactured merchandise, would be known as a dealer or distributor of the product of others, save the one feature

of reducing in this case a part of the fruit to possession for sale, to wit: the gathering of it from the groves. Approximately 39% comes from the other two sources, canneries and small owners.

Undoubtedly a wider latitude should be accorded to a fruit grower engaged in this type of agriculture, whose employees, in consummation of the operations of producing, hauled the fruit either to bins on farms or to the market for sale. See *Fosgate Co.* v. *U. S.*, 125 F.2d 775 (5th Cir.); *Lake Region Packing Ass'n* v. *U. S.*, 146 F.2d 157 (5th Cir.); *N.L.R.B.* v. *Edinburg Citrus Ass'n*, 147 F.2d 353 (5th Cir.); and *N.L.R.B.* v. *John W. Campbell, Inc.*, 159 F.2d 184 (5th Cir.).

In *Farmers Irrigation Co.* v. *McComb*, 337 U.S. 755, the Supreme Court had under consideration the question of whether employees of a non-profit irrigation company, wholly owned by the farmers to whom it supplied water, were engaged in agriculture. It was held that, while the supplying of water for irrigation constituted a phase in the producing of goods by farmers for commerce, those employees were not excluded from the protection of the Fair Labor Standards Act since they were not farmers, but delivered the water at gates where it was taken over by others actually doing the work "on a farm".

> "As can be readily seen, this definition" (quoted above) "has two distinct branches. First, there is the primary meaning. Agriculture includes farming in all its branches. Certain specific practices such as cultivation and tillage of the soil, dairying, etc., are listed as being included in this primary meaning. Second, there is the broader meaning. Agriculture is defined to include things other than farming as so illustrated. It includes any practices, whether or not themselves farming practices, which are performed either *by a farmer or on a farm*, incidently to or in conjunction with 'such' farming operations.

"Dealing with these two branches of the definition in order, it is clear, first, that the occupation in which the company's employees are engaged is not farming. The company owns no farms and raises no crops. Irrigation, strictly defined—that is the actual watering of the soil—may no doubt be called farming. And the work of the farmers in seeing to it that the water released from the company's ditches is properly distributed to the growing plants undoubtedly is included in farming as being part of the process of cultivating and tilling the soil. *But the significant fact in this case is that this work is not done by the company's employees.* There is a clear and definite division of function. The ditch company carries the water in its own canals to the lands of the farmers. When a farmer desires water so that he can irrigate his fields he notifies the company. Its employees then operate the headgates, which are located on the company's canals and which the farmers are forbidden to operate, so that the appropriate quantity of water can pass out of the company's canals and off the company's land into the farmer's irrigation ditches. The responsibility of the company's employees ceases when they so release the water. The water is supplied to the farmer at the headgates and he takes it over there and uses it, in his own laterals, as he sees fit, to irrigate his crops.

"The ditch company, then, is not engaged in cultivating or tilling the soil or in growing any agricultural commodity. It is contended, however, that it is nevertheless engaged in farming because of the use, in the definition, of the words 'production . . . of any agricultural . . . commodities' in addition to the words cultivation, tillage, harvesting, etc. Since produce is defined in Sec. 3(j) of the Act so as to include, 'for purposes of this Act,' any occupation necessary to production, it is argued that production of agricultural commodities includes any occupation necessary to the production of agricultural commodities. It is thus argued that in the case of agriculture, as distinguished

from other exemptions, Congress did provide that the exemption should include not only the occupation named but also all of those other occupations whose work is necessary to it.

"If Congress intended to convey that meaning by using the word production in the definition of agriculture, we should, of course, give the definition its intended scope. But we do not 'make a fortress out of the dictionary.' And we have, therefore, consistently refused to pervert the process of interpretation by mechanically applying definitions in unintended contexts. *Lawson* v. *Suwannee S. S. Co.*, 336 U.S. 198 (1949); *Atlantic Cleaners & Dyers* v. *United States*, 286 U.S. 427 (1932). In the present case, the legislative history confirms what a natural reading of the language of the agricultural exemption would indicate—the word production was not there used in the artificial and special sense in which it was defined in Sec. 3(j). Certainly, if it were meant in that sense, it would make surplusage of the remainder of the carefully wrought definition. And it would hardly have been innocuously placed among such specific terms as 'cultivation', 'tillage', 'growing', and 'harvesting'." 337 U.S. 762, *et seq.* (Emphasis supplied by the writer.)

The work of gathering the fruit and loading it into trailers at the groves in the present case, was done, of course, on the farm, as an essential part of producing for the market, and clearly fell within the express terms of the Act; but the hauling from the farm by appellant who was not a farmer or producer in agriculture, as required by the law, cannot be said to be work "performed by a farmer or on a farm * * *" under the above quoted definition of agriculture. It is believed that references in quotations by appellant from the Congressional Record as to what

happened during consideration of the bills that finally culminated in the Fair Labor Standards Act are too indefinite and inconclusive to merit comment.

The judgment appealed from is

AFFIRMED.

A True copy:
Teste:

Clerk of the United States Court of Appeals for the Fifth Circuit.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 14725

FORT MASON FRUIT COMPANY, a corporation, *Appellant,*

versus

MARTIN P. DURKIN, Secretary of Labor, United States Department of Labor, (James P. Mitchell, as Secretary of Labor, United States Department of Labor, substituted in place and stead of Martin P. Durkin), *Appellee.*

Appeal from the United States District Court for the Southern District of Florida.

(June 30, 1954.)

Before STRUM and RIVES, Circuit Judges, and DAWKINS, District Judge.

DAWKINS, District Judge: This is a companion case to CHAPMAN V. DURKIN, SECRETARY OF LABOR, No. 14694, this day decided; and the issues are identical, with common counsel. Appellant was also engaged in "bird dog" operations of the citrus fruit industry in the State of Florida. It owned no farms or groves and its employees worked indiscriminately in gathering rejected

fruit from the trees and in transporting it to bins or canneries, with approximately the same quantity of purchases as eliminations from packers and small producers at its yard.

The only difference appears to be that appellant contends it has a stronger case on the facts because of a stipulation in the record, to wit:

> "16. All of defendant's employees are necessary to the maintenance and operation of its business and all operate as an integral part thereof."

Judge Simpson below held, as did Judge Barker in the Chapman case, and for the same reasons, that while appellant was not a farmer, employees who gathered the fruit were essentially workers in agriculture "on a farm" within the meaning of the Act (Sec. 213(f)).

It is not believed that the stipulation justifies any different conclusion from that reached in the Chapman case. There, the business was a unit, and, as here, was one of buying fruit which it gathered from the trees, as well as fruit rejected by packers and fruit brought to its yard by small producers. Since appellant was not a "farmer" within the meaning of the law, all of the labor, other than gathering the unpicked fruit, was performed elsewhere than "on a farm"; and regardless of the manner in which the appellant operated, under the authorities cited in the Chapman case, the fact that all employees operated as a unit could not serve to exempt even the same individual employees when engaged in other operations of appellant away from the farm.

The judgment below is

AFFIRMED.

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 422

FORT MASON FRUIT COMPANY, A CORPORATION, PETITIONER

v.

MARTIN P. DURKIN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR (JAMES P. MITCHELL, AS SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, SUBSTITUTED IN PLACE AND STEAD OF MARTIN P. DURKIN, RESIGNED)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion, findings of fact and conclusions of law of the district court (R. 87–97) are unreported. The opinion of the Court of Appeals (Pet. 16–22) is reported at 214 F. 2d 363.

JURISDICTION

The judgment of the Court of Appeals was entered on June 30, 1954 (Pet. 23–24). Petition

322700—54

for rehearing was denied on August 2, 1954. The petition for a writ of certiorari was filed on October 25, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

STATEMENT

As stated in the decision below, "the issues [in the instant case] are identical" (Pet. p. 23) to those in *Carl H. Chapman d/b/a Carl Chapman Fruit Company* v. *Durkin*, No. 421, in which a petition for a writ of certiorari is also pending before this Court. The facts in the two cases are also virtually identical except that petitioner here is located in Ft. Mason, Florida (R. 87), its operations are slightly less extensive than those of the Chapman Fruit Company and it acquires a larger proportion of its fruit (85%) from grove purchases. In addition, this petitioner was charged with, and found to be in violation of, the minimum wage provisions as well as the overtime and record-keeping provisions of the Fair Labor Standards Act of 1938, as amended.

The findings of fact and conclusions of law made by the district court in this case are substantially the same as those made by the district court in the *Chapman* case. The Court of Appeals reached the same conclusion here as it did in the *Chapman* case, both being decided on the same day (Pet. 23–24).

CONCLUSION

For the reasons set forth in our brief in opposition in the *Chapman* case, the petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

STUART ROTHMAN,
Solicitor,

BESSIE MARGOLIN,
Assistant Solicitor,

JOSEPH M. STONE,
Attorney,
United States Department of Labor.

NOVEMBER 1954.

U. S. GOVERNMENT PRINTING OFFICE: 1954